

India

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1958)
Communication dated 27 August 2009 from the International Trade Union Confederation

(ITUC). The Committee notes that the ITUC's communication was forwarded to the Government on 3 September 2009 for its comment and that the Government has not yet provided any comments in reply. In their communication, the ITUC draws the Committee's attention to the situation of the Dongria Kondh indigenous community, a group of about 8,000 people living in 90 settlements scattered over and at the base of the Niyamgiri Hills, Lanjigarh, in the State of Orissa. The Dongria Kondh practice shifting cultivation in the hills, and also rely on them as a source of water, wood and traditional plants. The communication also describes the sacred nature of the hills for this indigenous community. According to the ITUC, India's Ministry of Environment and Forests gave environmental clearance on 28 April 2009 for operating a bauxite mine at the top of the Niyamgiri Hills, occupying close to 700 hectares of the traditional lands of the Dongria Kondh. Bauxite from the mine is to be processed at a refinery plant at Lanjigarh, which is at the foot of the hills. The ITUC cites reports attesting to a negative environmental and health impact of the mining project threatening the very basis of the community's existence. The ITUC states that neither the Government of India nor the Government of the State Orissa have ever consulted with the community as regards leasing of the lands or any other aspect of the mining project. While some public hearings regarding the project were held, the ITUC submits that these were inappropriate to ensure that the interests of the Dongria Kondh could be taken into account. The Committee also notes that the Supreme Court of India ordered the establishment of a "Special Purposes Vehicle (SPV)" with the State of Orissa and the companies pursuing the mining project as stakeholders, which is to provide a rehabilitation package involving, inter alia, an obligation by the companies to contribute to the development of the affected tribal areas. However, according to the ITUC, no development plans have been disclosed to the local communities nor has their participation been sought. The ITUC submits that the Government has failed to give effect to *Articles 2, 5, 11, 12, 20 and 27 of the Convention*.

The Committee requests the Government to provide detailed information in reply to all the issues raised by the ITUC. While awaiting a reply from the Government, the Committee, given the seriousness of the situation, nevertheless wishes to express concern over the reported adverse impact on the Dongria Kondh of the bauxite mining and processing activities on the lands which they traditionally occupy and which appear to be central to their very existence. The Committee expresses serious concern at the apparent lack of involvement of the tribal communities affected in matters relating to the project which affects them directly. The Committee urges the Government to take the measures necessary to ensure their rights and interests are fully respected and guaranteed, and to indicate the measures it has taken. In this regard, the Committee also requests the Government to report on the implementation of the rehabilitation and development measures ordered by the Supreme Court, and

the measures the Government has taken to ensure the involvement of the communities themselves in the design and implementation of such measures.

Articles 2, 5 and 27 of the Convention. Coordinated and systematic action. The

Committee notes from the Government's report that a National Tribal Policy is still under consideration, but not yet finalized. The Government indicates that the policy would aim at strengthening the legal protection and empowerment of the tribal communities, raising levels of human development, and at encouraging and protecting tribal traditions. The policy would also focus on particularly vulnerable tribal groups. The

Prime Minister of India, when addressing the Chief Ministers' Conference on the Implementation of the Forest Rights Act, 2006, on 4 November 2009, welcomed the efforts made by the Ministry of Tribal Affairs towards achieving consensus on the National Tribal Policy. The Committee considers that the elaboration and implementation of such a policy would indeed provide an important opportunity to

strengthen the Government's action to protect the rights and interests of India's tribal population in accordance with international standards. The Committee takes this opportunity to encourage the Government to draw on and consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which revises Convention No. 107, which is also encouraged by the Governing Body of the ILO and would be consistent with the recognition of the need for new approaches in dealing with tribal affairs as highlighted by the Prime Minister on 4 November 2009. ***The Committee asks the Government to continue to provide information on the progress made in adopting the National Tribal Policy, including information on how the collaboration with and consultation of tribal groups and their representatives in the process of developing the policy is sought. Noting that the Government in its report, and through a request made to the ILO in May 2009, expressed interest in sharing experiences with other countries regarding strategies for the improvement of the situation of tribal groups, including through workshops and training programmes to be organized in cooperation with the ILO, the Committee looks forward to receiving information on the holding of such activities and their outcomes.***

Articles 11–13. Land rights. Legislative developments. The Committee notes the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ("Forest Rights Act, 2006"). The Act recognizes individual and collective rights of tribal and other forest dwellers with regard to land they have traditionally occupied or used, as defined in section 3 of the Act. The Gram Sabha (assembly of all men and women in the village above 18 years of age) is the authority mandated to receive rights claims, to consolidate and verify them and to prepare a map delineating the area of each claim that it recommends to be accepted. A subdivisional-level committee set up by the state Government is responsible for examining resolutions passed by the Gram Sabha and for preparing a record of forest rights for final decision by a district-level committee. In addition, a state-level monitoring committee is to be established to oversee the process, which reports to the ministry of the central Government dealing with tribal affairs. The functions and procedures of these various committees are laid down in the Scheduled Tribes and Other Forest

Dwellers (Recognition of Forest Rights) Rules, 2007. The Committee notes that special provision is made to ensure representation of women, scheduled tribes and other tribal groups in the Gram Sabha and the committees at the different levels.

The Committee notes that under the Forest Rights Act no member of a forest-dwelling tribe or other traditional forest dweller shall be evicted until the recognition and verification procedure is complete (section 4(5)). Once the process of recognition and vesting of rights is complete, the Act allows under certain conditions the relocation of forest dwellers from their land to create protected areas for wildlife conservation.

Among the specified preconditions for such relocation, there must be no other reasonable options to avoid irreversible damage or threat to the existence of a species in its habitat. Further, a resettlement package providing for a secure livelihood must be prepared, communicated to rights holders, and receive the free and informed consent of the Gram Sabha concerned. ***The Committee requests the Government to provide information on the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, including information on the number of claims processed and title deeds issued, as well as any grievances brought against decisions made under the Act and their outcomes. The Committee also asks the Government to indicate whether any relocation has taken place and, in such cases, provide information indicating that resettlement has complied with Article 12(2) and (3) of the Convention. In addition, the Committee asks the Government to indicate whether any further legislative initiatives are envisaged to ensure that the rights of the tribal population to the land they have traditionally occupied are identified and protected to give effect to Article 11 of the Convention.***

The Sardar Sarovar Dam Project. In its previous observation, the Committee requested the Government to provide information regarding the number of persons displaced by the Sardar Sarovar Dam Project and their resettlement and compensation. In its report, the Government states that a total of 244 villages will be affected by the dam project either by total or partial submergence or otherwise, which are home to 46,606 families comprised of 127,446 persons (based on the 1991 Census). Recalling its comments over many years on this project, the Committee notes that the number of affected persons, a majority of them being belonging to the tribal population, has continued to increase. The Government, in its report, reiterates the requirements for resettlement and rehabilitation that had been established by the Narmada Water Disputes Tribunal in 1979. However, the Government states that the three states involved in the project introduced more favourable conditions since then and provides detailed information regarding the amount of land allocated and other assistance provided. According to the Government's report, as of 31 July 2008, all 32,434 affected families at this date had been resettled. ***The Committee requests the Government to continue to provide updated information on the number of persons belonging to the tribal population displaced from the land they traditionally occupy as a result of the Sardar Sarovar Dam Project and the measures taken to guarantee their resettlement and compensation in conformity with Articles 12(2) and (3) of the Convention.***

Parts III–VI of the Convention. The Committee notes the information provided by the Government on measures taken in the areas of education and training, including vocational training, and employment and social security. It also notes that, according to the comments made by the Centre of Indian Trade Unions (CITU) in their communication dated 25 August 2009, the members of the tribal population are not able to benefit from the job reservations made for them in government employment and state-owned enterprises due to the lack of education and training made available to them. The CITU suggests that the Government provide more detailed statistics on the employment situation of tribal population. ***The Committee requests the Government to continue to provide updated information on the various measures taken in the areas of education, training and employment and other areas covered in Parts III–VI of the Convention to the benefit of the tribal population, including statistical information of the participation of men and women belonging to tribal groups in education and employment.***

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]